

US

BIS Issues Request for Comment on New Proposed Rule Amending License Exception APR

On April 28, 2020, the US Department of Commerce's Bureau of Industry and Security (BIS) [published](#) in the *Federal Register* a Proposed Rule that would amend the Export Administration Regulations (EAR), 15 CFR parts 730-774, by removing a provision from License Exception Additional Permissive Reexports (APR), § 744.16. Specifically, the Proposed Rule would remove § 744.16(a)(3)(ii), which currently authorizes the unlicensed reexport or transfer (in-country) of certain national security-controlled items from a country listed in Country Group A:1 (Suppl. No. 1 to part 740) or Hong Kong, which are destined for a country listed in Country Group D:1, other than North Korea.

BIS states that they consider the Proposed Rule differs in licensing policy between the US and some of the countries listed in Country Group A:1. Under the existing License Exception APR, parties seeking to use APR to reexport a national security-controlled item from a country listed in Country Group A:1 or Hong Kong to a Country Group D:1 destination, provided that the reexport is authorized by the government of the reexporting country, and the items are only controlled for national security (and are not otherwise controlled under Export Control Classification Numbers (ECCN) 0A919, 3A001.b.2 or b.3, 6A002, 6A003, or a 0x5zz ECCN. According to the BIS, certain partner countries listed in Country Group A:1 or Hong Kong do not perceive the same threat caused by the integration of civilian and military technology development in countries of concern, resulting in those partner countries authorizing the reexport or transfer (in-country) of items subject to the EAR, which BIS would not otherwise authorize for export.

BIS is seeking comments on how the Proposed Rule would impact persons currently using or planning to use License Exception APR. BIS also is seeking information on the volume of transactions that would be affected by this Proposed Rule, how the Proposed Rule would affect the amount of time necessary to complete such transactions in the future, and how the Proposed Rule would otherwise affect current business. Comments are due by June 29, 2020 and may be submitted through www.regulations.gov under the ID BIS-2020-0010.

BIS Issues New Export Control Rules Taking Effect on June 29, 2020

Certain items intended for military end use and military end users

– On April 28, 2020, BIS [published](#) in the *Federal Register* a Final Rule amending the EAR in three ways: (1) expanding the license requirements in § 744.21 on exports, reexports and transfers (in-country) of items intended for military end use or military end users located in the People's Republic of China (China), Russia or Venezuela; (2) creating a new reason for control and associated review policy for regional stability for certain items intended for export, reexport or transfer (in-country) to China, Russia and Venezuela; and (3) adding Electronic Export Information (EEI) filing requirements in the Automated Export System (AES) for exports to China, Russia and Venezuela. See [our publication](#) analyzing the new rule.

Removing License Exception CIV – On April 28, 2020, BIS [published](#) in the *Federal Register* a Final Rule amending the EAR by removing License Exception Civil End-Users (CIV) (§ 740.5), which authorized the unlicensed export, reexport and transfer (in-country) of certain national security-controlled items, which would otherwise require an export license, to certain civil end users for civil end use in countries listed in Country Group D:1 (Suppl. No. 1 to part 740).

As a result of this amendment to the EAR, BIS removed the CIV paragraph from the List-Based License Exceptions section wherever it appears in the Export Control Classification Numbers (ECCN) on the Commerce Control List (CCL) (Suppl. No. 1 to part 774). BIS states that they are removing License Exception CIV due to the increasing integration of civilian and military technology development to those countries listed in Country Group D:1. Beginning on June 29, 2020, BIS will require a license for the export, reexport or transfer (in-country) of those national security-controlled items previously authorized under License Exception CIV to Country Group D:1 destinations, consistent with the licensing policy set forth in § 742.2(b) of the EAR, which states that BIS policy is to approve license applications on a case-by-case basis provided that the items are for civilian use or would otherwise not make a significant contribution to the military potential of any country listed in Country Group D:1.

FEMA Rules to Temporarily Restrict PPE Exports for US COVID-19 Response

On April 10, 2020, the Federal Emergency Management Agency (FEMA) published a [temporary final rule](#) to restrict the US exports of personal protective equipment (PPE) in order to preserve certain scarce medical resources for the domestic battle against COVID-19. The rule is effective beginning April 7, 2020, and, unless otherwise modified or rescinded, it will stay in effect for 120 days, until August 10, 2020. See [our blog post](#) for additional details.

DDTC Temporarily Reduces Certain ITAR-Related Registration Fees

On May 6, 2020, the US Department of State's Directorate of Defense Trade Controls (DDTC) [published](#) in the *Federal Register* a notice announcing that it is temporarily reducing the Tier I, Tier II and new registrant fees to persons in the US who engage in manufacturing, exporting or temporarily importing defense articles, furnishing defense services or who engage in brokering activities pursuant to the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), due to the impact of the COVID-19 pandemic on the national economy and Defense Industrial Base. Specifically, the registration fees for Tier I, Tier II and new DDTC registrants is reduced to US\$500. The DDTC stated that it is not reducing the fees for Tier III registrants, as Tier III already has a provision for reduced fees. The temporary fee reduction took effect on May 1, 2020, and will expire on April 30, 2021, unless modified by subsequent notifications.

DDTC Temporarily Modifies ITAR

On May 1, 2020, the DDTC [published](#) in the *Federal Register* a notice announcing temporary suspensions, modifications, or exceptions to the ITAR. The temporary suspensions, modifications, or exceptions are as follows:

1. As of February 29, 2020, those manufacturers, exporters or brokers whose ITAR registrations have an expiration date of February 29, March 31, April 30, May 31 or June 30, 2020, are extended for two months from their original date of expiration.
2. As of March 13, 2020, any ITAR license or agreement that expires between March 13, 2020 and May 31, 2020, is extended for six months from the date of expiration, provided there is no change to the scope or value of the authorization and no name/address changes are required.
3. As of March 13, 2020, employees required by ITAR § 120.39(a)(2) to work at a company's facilities, are permitted through July 31, 2020 to work at a remote work location, provided the individual is not located in Russia or a country listed in ITAR § 126.1.
4. As of March 13, 2020, employees of licensed entities who are working remotely in a country not currently authorized by a technical assistance agreement, manufacturing license agreement, or exemption, are permitted through July 31, 2020 to send, receive or access any technical data authorized for export, reexport or retransfer to their employer via a technical assistance agreement, manufacturing license agreement or exemption, provided that the employee is not located in Russia or a country listed in ITAR § 126.1.

DDTC Revises Two Previous FAQs Regarding US Persons Abroad

On April 6, 2020, DDTC announced it had revised two published Frequently Asked Questions (FAQs). The revised FAQs address US persons abroad and requests for authorization to provide defense services. See [our blog post](#) for additional details.

OFAC and COVID-19-related Humanitarian Assistance and Trade

On April 16, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) released a [Fact Sheet](#) explaining relevant exemptions, exceptions and authorizations for humanitarian assistance and trade in response to the COVID-19 global pandemic under the Iran, Venezuela, North Korea, Syria, Cuba and Ukraine/Russia-related sanctions program.

In response to COVID-19, OFAC also encourages persons, including businesses, affected by the COVID-19 global pandemic to contact OFAC as soon as practicable if the person believes they may experience delays in its ability to meet deadlines associated with regulatory requirements administered by OFAC. OFAC has released further updates regarding the COVID-19 global pandemic in its [April 20](#) announcement.

OFAC Extends Venezuela-related General License 13E, Authorizing Certain Activities Involving Nynas AB

OFAC issued [General License 13E](#) extending General License 13D, which was set to expire on April 14, 2020. General License 13E expires on May 14, 2020. This General License authorizes certain activities and transactions with Nynas AB. OFAC explained that "Nynas AB remains engaged with OFAC on a proposed corporate restructuring that could potentially result in significant changes to Nynas AB's ownership and control. OFAC is extending the expiration date of this GL until May 14, 2020 to afford additional time to complete this engagement."

Counterterrorism Designations

On April 7, 2020, the State Department designated the Russian Imperial Movement (RIM) and members of its leadership as Specially Designated Global Terrorists. This is the first time in history that the State Department has designated a white supremacist terrorist group. According to the press release, "RIM has provided paramilitary-style training to white supremacists and neo-Nazis in Europe and actively works to rally these types of groups into a common front against their perceived enemies." The State Department press release is available [here](#) and the corresponding OFAC announcement is available [here](#).

DOJ Charges Industrial Bank of Korea for Violations of The Bank Secrecy Act

On April 20, 2020, the US Department of Justice (DOJ) [announced](#) criminal charges against Industrial Bank of Korea (IBK). The charges include a one-count felony charge against IBK for violating the Bank Secrecy Act by willfully failing to establish, implement and maintain an adequate anti-money laundering program at IBK's New York branch. US authorities claim this failure permitted the processing of more than US\$1 billion in transactions in violation of the International Emergency Economic Powers Act.

Additionally, DOJ announced an agreement under which IBK would accept responsibility for its conduct by (1) stipulating to the accuracy of a Statement of Facts, (2) paying penalties totaling US\$86 million, (3) refraining from all future criminal conduct, and (4) implementing remedial measures as required by its regulators. The US government has agreed to defer prosecution for a period of two years, after which time the government will seek to dismiss the charges, on the condition of IBK's continued compliance with the agreement.

The US government will collect on the federal penalty through IBK's forfeiture to the US of US\$51 million in a civil forfeiture action also filed on April 20, 2020. Half of that amount will be transferred to the United States Victims of State Sponsored Terrorism Fund. In addition, IBK has reached a separate agreement with the New York State Department of Financial Services that will see it pay an additional US\$35 million penalty for regulatory violations.

DOJ Charges Two Iranian Nationals for Violating Money Laundering and Sanctions Laws by Procuring Petroleum Tanker

On May 1, 2020, DOJ announced a two-count criminal complaint against Amir Dianat and Kamran Lajmiri, both Iranian nationals. The charges include conspiracy to provide US financial services to Iranian entities and their front companies attempting to purchase a petroleum tanker, the Nautic, in September 2019. The complaint alleges that the defendants concealed that the sale would benefit Iran, all as part of a scheme to enrich the defendants and other conspirators, and to evade the requirements of the International Emergency Economic Powers Act and the Iranian Transactions and Sanctions Regulations.

A related verified civil forfeiture complaint was filed against US\$12,338,941.91, funds allegedly involved in the scheme. The civil forfeiture complaint alleges that this scheme involved the National Iranian Oil Company, the National Iranian Tanker Company and the IRGC-Qods Force (IRGC-QF), all listed by OFAC as specially designated nationals. The IRGC has also been designated a Foreign Terrorist Organization. This forfeiture action is the largest ever seizure of IRGC-QF related funds. Additionally, the Department of the Treasury filed a concurrent action designating Dianat and his related front company, Taif Mining. The action blocks all property and interests in property of these parties that are in the US or in the possession or control of US persons.

EU

EU Temporarily Tightens Controls on PPE Exports Due to COVID-19

On April 23, the EU Commission issued [Implementing Regulation 568/2020](#) on export controls of certain products, narrowing the scope to spectacles and visors, masks and protective garments. This decision will be in force until May 25, 2020.

EU Offers VAT Relief for COVID-19 Medical Equipment and Devices Imports

On April 3, the EU Commission issued a [decision](#) relieving EU custom legislation ([Council Regulation 1186/2009](#) and [Council Directive 132/2009](#)) on VAT duties on imports of medical equipment and devices needed to combat the effects of COVID-19 as per the possibility to grant duty relief for the benefit of disaster victims.

EU Introduces Additional Tariffs on US Products

On April 6, EU Commission issued [Implementing Regulation 502/2020](#) on certain commercial policy measures concerning certain products originating in the US, introducing additional tariffs on products as a retaliatory measure to the US tariff increases on the importation of EU products (principally aluminum and steel related). The EU targets the following products: (i) as of May 8, 2020, extra 20% tariffs are imposed on imports of cigarette lighters, and 7% on imports of fittings for furniture, coachwork or the like, and (ii) as of February 8, 2023, extra 4.4% tariffs are going to be charged on imports of playing cards.

EU Parliament Pushes Back Against Possibility of Easing Russia Sanctions

On April 3, 19 members of the EU Parliament sent a [letter](#) to the EU Commission rejecting the possibility of reviewing or lifting EU sanctions against Russia.

Dutch Court Rules Against Iranians in a US Extradition Request Case

On April 7, the Supreme Court of the Netherlands [ruled](#) against an Iranian nationals' challenge to a US extradition request, rejecting his defense based on the EU Blocking Statute. The Court held that the trading activities on materials that may contribute to Iran's military capabilities were prohibited by the EU export controls and, therefore, the EU Blocking Regulation does not apply such transactions that were illegal under EU and Dutch regulations at the time of their performance.

EU Decides on Actions With Respect to Several Countries

Yemen – On April 2, the EU Council amended EU Regulation 1352/2014 concerning restrictive measures in view of the situation in Yemen through [Regulation 488/2020](#) and furthermore amended EU Council Decision (CFSP) 932/2014 through [Decision 490/2020](#) both to implement United National Security Council (UNSC) [Resolution 2511](#) on measures regarding Yemen.

Iran – On April 7, the EU Council amended Decision (CFSP) 235/2011 on restrictive measures directed against persons and entities in view of the situation in Iran through [Decision \(CFSP\) 512/2020](#) and issued [Implementing Regulation 510/2020](#) for the implementation of the amended decision.

Myanmar/Burma – On April 23, the EU Council amended Decision (CFSP) 184/2013 on restrictive measures against Myanmar/Burma through [Decision \(CFSP\) 563/2020](#) and issued [Implementing Regulation 562/2020](#) for the implementation of the amended Decision.

Sudan – On April 30, the EU Council adopted [conclusions](#) in the situation of South Sudan.

EU Offers Statements of Support to the United Nations

Global ceasefire due to COVID-19 – On April 3, High Representative Josep Borrell on behalf of the EU stated a [declaration](#) supporting the United Nations Secretary General (UNSG) call for a ceasefire in light of the global pandemic, stressing that sanctions should not impede the delivery of essential equipment and supplies underlining that EU sanctions provide humanitarian exceptions for to fight of the pandemic.

Condemnation of Syrian use of chemical weapons – On April 9, High Representative Josep Borrell on behalf of the EU stated a [declaration](#) supporting the first report of the Investigation and Identification Team to the Executive Council of the Organization for the Prohibition of Chemical Weapons and to the UNSG and condemned the use of chemical weapons by the Syrian Arab Air Force.

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UK

UK Will Allow Importers to Defer Duty and VAT Payments Due to COVID-19

UK HM Revenue & Customs (HMRC) has issued a communication stating that it will consider extending payment deadlines, on an individual basis, for those facing severe financial difficulties as a result of COVID-19.

Businesses that have a duty deferment account may request an extension of the payment deadline, without needing to call on a guarantee, or to risk suspension of their account. No interest will be charged if an extension is agreed. Where no such account exists, importers may make a request for deferment that will be considered by HMRC on a case-by-case basis.

Export Control Joint Unit (ECJU) Issues Guidance on Remote Compliance Checks

On April 15, the ECJU issued [guidance](#) on the operation of remote compliance checks, in light of the ongoing pandemic. The guidance requests that all businesses closed due to the pandemic inform their compliance officer, with a formal notice confirming the closure. The ECJU says that it will accept digital or copy consignee undertakings in lieu of original documents, with an explanation as to why originals were not possible. The ECJU has asked that businesses keep it informed of any inability to access records.

Dates for visits will be confirmed four to six weeks in advance and businesses will be asked to complete a questionnaire beforehand. This should enclose a list of exports made under the relevant licenses over the past two years.

As a result of delays being experienced in obtaining approvals from the Ministry of Defence, the ECJU will accept evidence of application and email acknowledgement from the Ministry. The ECJU reserves the right to request copies of any such approvals at its next on-site visit.

ECJU Revises Arrangements for Processing License Applications During the Outbreak

On April 9, 2020, the ECJU released a [notice](#) to exporters with amended arrangements for processing of licenses during the outbreak. This includes an increase in response time for RFIs from 20 to 40 working days and changes to the rules on original and hard copies. In addition, electronic signatures will be accepted on supporting documentation and Microsoft Word versions can be submitted to allow the ECJU to add details in electronically, where necessary.

Contacts

Please contact one of the trade practitioners listed below, or you can reach our team collectively at InternationalTradeCompliance@squirepb.com.

US

George Grammas

Partner, Washington DC/London
T +1 202 626 6234
T +44 20 7655 1301
E george.grammas@squirepb.com

Daniel Waltz

Partner, Washington DC
T +1 202 457 5651
E daniel.waltz@squirepb.com

Karen Harbaugh

Partner, Washington DC
T +1 202 457 6485
E karen.harbaugh@squirepb.com

EU

Robert MacLean

Partner, Brussels/London
T +32 2 627 7619/+44 20 7655 1651
E robert.maclean@squirepb.com

José María Viñals

Partner, Brussels/Madrid
T +32 2 627 1111
T +34 91 426 4840
E josemaria.vinals@squirepb.com

Wojciech Maciejewski

Associate, Brussels
T +32 2 627 7612
E wojciech.maciejewski@squirepb.com

UK

Matthew Kirk

International Affairs Advisor, London
T +44 20 7655 1389
E matthew.kirk@squirepb.com

International Trade Practice co-leaders: Frank Samolis (partner, Washington DC) and George Grammas

About Us

Our export controls and sanctions lawyers have the ability to provide advice on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial institutions in Europe, the US and other jurisdictions on export control and sanctions from a multijurisdictional perspective. Our team is part of our overall International Trade Practice, providing a “one-stop shop” solution to global trade compliance through rapid, professional and tailored advice and compliance tools to fit your business needs and processes.

Resources to Strengthen Compliance

We encourage you to visit our blog, *The Trade Practitioner*, where you will find additional updates and information on export controls, sanctions and other international trade topics. In addition, organizations engaged in the trade of items specially designed for military or space applications are encouraged to download our complimentary *ITAR Practitioner's Handbook*, which covers the International

Traffic in Arms Regulations (ITAR) and the US Department of Commerce “600 Series.”

COVID-19 Resources Hub

Please visit our resource hub for extensive legal, business and regulatory advice that is complemented by our unique political insight, as well as practice support tools to help you navigate the unfolding pandemic, while helping you stay abreast of the changes to regulations and compliance requirements around the globe.